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CRP No.4961 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

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1. P.Rajendran
2. P.Krishna Ganesh

.. Petitioners

-VS-

S.Raja

.. Respondent

Prayer: Petition filed under Article 227 of the Constitution of India to direct learned Subordinate Judge, Perundurai, to number the unnumbered O.S.No. (CFR No.4481) of 2024.

For Petitioners : Mr.C.Ramaraj
* * * * *

ORDER

This civil revision petition challenges the order of return passed by the learned Subordinate Judge at Perundurai in O.S. (CFR) No.4481 of 2024.

2. O.S. (CFR) No.4481 of 2024 seeks for a declaration that the *ex parte* decree passed in O.S.No.124 of 2017 dated 23.07.2018 is null and void, and to consequently declare the sale deed dated 06.10.2023, executed



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pursuant to the orders in E.P.No.76 of 2018 in O.S.No.124 of 2017 by the learned Subordinate Judge at Perundurai, as null and void and not binding on the plaintiff.

3. The plaintiff is the son of one Vennila. Vennila had purchased a property on 08.06.1992. On 16.04.2015, Vennila is alleged to have entered into an agreement of sale with the defendant. As the sale deed was not executed in terms of the agreement, the defendant presented O.S.No.124 of 2017. The plaint alleges in paragraph 9 that the Court notice was not served on Venila, but the defendant had created an acknowledgement through private summons. On the strength of the private notice, the suit came to be decreed *ex parte*. Vennila passed away on 30.05.2022. The plaintiff pleads, on the date on which the sale deed was executed on 06.10.2023, Vennila was no more and therefore, the order passed in E.P.No.76 of 2018 is against the dead person and therefore, is null and void.

4. The learned Subordinate Judge at Perundurai returned the suit stating that the suit is not maintainable without a prayer to set aside the agreement dated 16.04.2015. It was also pointed out that the decree in



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O.S.No.124 of 2017 is not a preliminary decree, but a final one. Aggrieved by the fact that the learned Judge has refused to number the plaint, the civil revision petition is before me.

5. I heard Mr.Lakshmipathy in support of the revision.

6. Mr.Lakshmipathy concedes that the decree in O.S.No.124 of 2017 is not a preliminary decree but is a mistake at the time of drafting the plaint. He states that it is correct to say that it is only an *ex parte* decree and not a preliminary decree.

7 . Insofar as the return is concerned, Mr.Lakshmipathy states that the entire case has been presented on the plea that fraud had been played on the Court by showing the private notice as Court notice and on that basis, a decree had been obtained. Therefore, he states that since fraud has been shown before the Court, the suit ought to have been numbered. He states that the issue is covered by the judgment of this Court in ***Selvaraj vs. Koodankulam Nuclear Power Plant India Limited, 2021 (4) CTC 539*** and seeks for an order to set aside the first return made by the learned



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Subordinate Judge and to number the plaint.

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8. I have considered the plea of Mr.Lakshmipathy.

9. The view of the learned Subordinate Judge that a suit has to be presented challenging the agreement of sale does not appeal to me. This is because, by virtue of the decree passed by the Court on 23.07.2018, the agreement merges with the decree. The agreement of sale dated 16.04.2015 only gives a cause of action for the plaintiff to present a suit for specific performance. Once the suit is presented and a decree has been passed, the cause of action and the agreement merge with the decree. Nothing remains in the agreement for a party to challenge. It is for this reason that the plaintiff has challenged the very decree in O.S.No.124 of 2017 dated 23.07.2018.

10. Further, as pointed out by the Hon'ble Mr.Justice N.Seshasayee in ***Selvaraj vs Koodankulam Nuclear Power Plant India Limited***, cited supra, the Court need not play the role of the defendant at the time of numbering the plaint. The defendant, I am sure, is competent to raise all



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pleas in order to defeat the case of the plaintiff. Let the parties litigate amongst themselves. The Court need not play an active role either in favour of one party or against the other.

In the light of the aforesaid discussion, the civil revision petition succeeds in part. Return No.1 made by the learned Subordinate Judge at Perundurai is set aside. Return No.2 is sustained. Subject to the corrections being carried out to the prayer portion (a), the learned Judge is requested to number the plaint and issue summons if it is otherwise in order. No costs.

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Index : Yes/No
Neutral Citation : Yes/No

Note to Registry:

The original of the plaint enclosed along with the plaint shall be returned to the counsel after getting usual endorsement.

sra

V.LAKSHMINARAYANAN, J.



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To

(sra)

The Subordinate Judge,
Perundurai.

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